

**CITY OF SEABROOK
RESOLUTION NO. 2016-11**

**DESIGNATION OF "SEABROOK FAÇADE IMPROVEMENT INCENTIVE
PROGRAM" FOR AUTHORIZED ECONOMIC INCENTIVES**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SEABROOK, TEXAS, CONFIRMING THE "SEABROOK FAÇADE
IMPROVEMENT INCENTIVE PROGRAM" AS AN AUTHORIZED
PROJECT OF THE SEABROOK ECONOMIC DEVELOPMENT
CORPORATION, INCLUDING THE "ECONOMIC DEVELOPMENT
AGREEMENT" WITH BURKE'S OUTLET STORES, LLC**

WHEREAS, on January 18, 1992, the voters of the City of Seabrook authorized the City of Seabrook to adopt a one-half cent sales and use tax to pay for the costs of projects authorized by Section 4B of Article 5190.6, V.T.C.S., as amended, and to pay for the principal and interest of bonds or other obligations issued to pay the costs of such designated projects; and

WHEREAS, the Seabrook Economic Development Corporation ("EDC") was established to oversee the expenditures of tax monies, and bylaws were established for the operation of the EDC; and

WHEREAS, the EDC has analyzed potential projects that will meet the enabling legislation's purposes and assist it in attracting new businesses, expanding existing businesses, creating jobs, and assisting in other statutorily authorized economic development programs; and

WHEREAS, the EDC has determined that the creation of economic incentives for the Project, as delineated in the "Seabrook Façade Improvement Incentive Program," specifically including the "Economic Development Agreement," ("Agreement"), with Burke's Outlet Stores, LLC, a copy of which is attached hereto as Exhibit A, is authorized under Texas Local Government Code Sections 505.151, 505.152, 505.155, 505.158, and 505.302, and is being used for the purpose of promoting new and expanded business enterprises in or near the City of Seabrook that create or retain primary jobs; and

WHEREAS, the EDC met on March 10, 2015, and at that time took formal action to support and approve funding of a proposed "Store Front Façade Improvements Incentive Project", in relation to Burke's Outlet Stores, LLC with contemplated expenditures to exceed \$10,000, to assist the eligible property owner, within a specified amount, with EDC grants not to exceed \$40,000 for this Agreement as part of the Seabrook Façade Improvement Incentive Program, ("Project"); and

WHEREAS, the City Council of the City of Seabrook conducted a public hearing on September 15, 2015 and approved a budget for the EDC of \$1,297,340.00, and approved \$690,000 for projects, including this Project; and

WHEREAS, the EDC has determined to proceed with the subject Project, subject to City Council approval of same in accordance with law; and

WHEREAS, the City Council (the "City") desires to encourage the development or redevelopment within the city limits of the City of Seabrook, by specifically including the Seabrook Façade Improvement Incentive Program ("Project") as described in the Seabrook Façade Improvement Incentive Program , attached hereto as Exhibit B; and

WHEREAS, the City Council finds that the incentives by the EDC, as provided herein will be reasonably likely to contribute to new or expanded business enterprises and the potential of the creation or retention of primary jobs, as provided by Chapters 501 and 505 of the Texas Local Government Code;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS:

Section 1. That the facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. That the Seabrook Façade Improvement Incentive Program, "Project" attached hereto as Exhibit B, and the incentive to Burke's Outlet Stores, LLC made thereunder in the "Agreement", attached hereto as Exhibit A, as approved by the Seabrook Economic Development Corporation ("EDC") pursuant to the Project guidelines is hereby approved by the City Council of the City of Seabrook .

ADOPTED AND APPROVED this the 5th day of April, 2016.

PASSED, APPROVED, AND ADOPTED on second and final reading this 19th day of April, 2016.

CITY OF SEABROOK, TEXAS

BY: Glenn Royal
Glenn Royal, Mayor

ATTEST:

Robin Hicks
Robin Hicks, TRMC
City Secretary



ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of April 19, 2016, by and between the **Seabrook Economic Development Corporation**, situated in Harris County, Texas ("SEDC"), and **Burke's Outlet Stores, LLC.**, a Texas limited liability corporation, with principal office located at 1806 38th Ave. East, Bradenton, FL 34208, and registered office located at 211 E. 7th Street Suite 620, Austin, TX 78701, ("Owner" or "Developer"), collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Developer/Owner proposes to make store site improvements at its location in the Miramar Shopping Center, operating under the name of Burke's Outlet, at 2136 Bayport Blvd Seabrook, TX 77586, located in the tract as referenced in Exhibit "B" and made a part hereof, hereinafter referred to as ("Project Facilities"); and

WHEREAS, Developer has proposed Project Facilities site improvements and submitted a Project Summary and budget to SEDC requesting a 50% match for façade improvements/exterior sign with a total cost represented to be \$84,250 for Burke's Outlet, and has applied for incentives from the SEDC under the Seabrook Façade Improvement Incentive Program ("Program"); and

WHEREAS, upon completion of such construction, Developer proposes to occupy and use the 16,000 square foot building of the Project Facilities as a ~~store~~ ^{Fashion} outlet store, ("Project"), collectively employing a minimum of 15-20 full time and part time employees; and

WHEREAS, Developer/Owner has applied to SEDC for a business incentive grant under the Program to help defray a portion of the costs of construction referred to above, a copy of which application, including project summary, and budget, (the "Application") is attached hereto and made a part hereof as Exhibit "A," the representations contained therein which the SEDC is specifically relying upon as true and correct in considering Owner's/Developer's Application for the Project; and

WHEREAS, pursuant to the Texas Local Government Code, Chapters 501 and 505 together with related authority, Economic Development Corporations of municipalities are authorized to establish programs to promote the creation or retention of jobs or that promote or develop new or expanded business enterprises in the municipality; and

WHEREAS, in accordance with such enabling laws, SEDC has adopted a "Seabrook Façade Improvement Incentive Program," (the "Program"); and

WHEREAS, SEDC hereby finds and determines that Developer's/Owner's proposed Project, together with the proposed Project Facilities, as set forth in the Application and related correspondence, meets the minimum eligibility requirements for an economic incentive grant pursuant to the Program; and

WHEREAS, SEDC hereby finds and determines that the Project, as depicted by Developer/Owner in the Application and related correspondence, encourages the creation or retention of jobs and/or promotes or develops new or expanded business enterprises in the municipality and can be reasonably anticipated to act as a catalyst for further economic development in the City of Seabrook; and

WHEREAS, SEDC, in reliance upon Developer's/Owner's representations desires to provide an economic development incentive grant under the Program to induce Developer/Owner to proceed with the implementation of the Project; now therefore,

FOR AND IN CONSIDERATION of the mutual promises, covenants, and agreements herein, the Parties agree as follows:

I. Inducement by SEDC. Conditioned upon Developer's/Owner's representations as being true and correct, pursuant to the guidelines of the Seabrook Façade Improvement Incentive Program ("Program"), final approval of façade expenses by SEDC, compliance with the City Code of Ordinances, this Agreement and approval by the Seabrook City Council, SEDC will provide, in the form of a reimbursement to Developer/Owner, an economic incentive grant ("Grant"), payable within thirty (30) days following issuance to the Developer/Owner of a required certificate of occupancy applicable to the Project. The final reimbursement amount of the economic incentive grant shall be determined and based on the actual amounts paid by Developer/Owner, limited to the façade improvements approved by the SEDC in accordance with the Program and Project, (which correlate to lines 15 -17 in the proposed budget submitted in the Application), in an amount not to exceed \$40,000.

II. Performance by Developer.

A. Improvements to Project Facilities. Developer/Owner shall provide for the construction and build-out of the Project Facilities as set forth in the Application. Construction shall be substantially complete on or before June 3, 2016.

B. Employment. Business occupants of the Project shall, within 30 days following the date of issuance of Grant funds, collectively employ not less than 15 full and part-time employees.

III. Recapture for Default. Grant funds provided hereunder by SEDC shall be contingent on compliance with the provisions of Sections I and II above. In the event of default on any of such requirements, and failure to completely cure any such default within thirty (30) days following written notice thereof by SEDC to Developer/Owner, Developer/Owner shall refund to SEDC the full amount of Grant funds provided hereunder.

Any required refund payment shall be remitted to SEDC within thirty (30) days following the expiration of the cure period set forth above, and any delinquent payment shall bear interest at the maximum rate allowed by law.

IV. Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action arising out of this Agreement shall be exclusively in Harris County, Texas.

V. Notices. Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

If to Owner/Developer:

Burke's Outlet Stores, LLC
James Simpson, Vice President
1806 38th Ave. East
Bradenton, FL 34208

If to SEDC:

City Manager
City of Seabrook
1700 First St.
Seabrook, Texas 77586

Notice shall be deemed received upon actual receipt or upon refusal of receipt.

VI. Assignment and Succession. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties. All rights hereunder may be assigned by Developer/Owner without restriction to any wholly owned subsidiary or affiliate of Developer/Owner or other entity controlled by Developer/Owner or by a subsidiary or affiliate of Developer/Owner, provided that notice of each assignment shall be given in writing to SEDC, but no other assignment shall be effective without the SEDC's written approval and consent. Provided further, no assignment hereunder shall be effective without the written acknowledgment and acceptance by the assignee of the duties and obligations of Developer/Owner set forth in this Agreement. Such approval shall not be unreasonably withheld.

VII. Time of Essence. Time is of the essence of this Agreement. However, in the event the date specified or computed under this Agreement for the performance of an obligation by any party, or for the occurrence of any event provided herein, shall be a Saturday, Sunday or "legal holiday" (defined for purposes hereof as any holiday observed by the County), then the date of such performance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.

VIII. Modification/Entire Agreement Expressed. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated, and signed by the Parties. This Agreement constitutes the entire agreement between the parties. No party shall be bound by any term, conditions, statement, or representations, oral or written, not herein contained.

IX. Severability. If any term or provision of this Agreement is held to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby; and in lieu of such illegal, invalid, or unenforceable term or provision, there shall be added automatically to this Agreement, a legal, valid, or enforceable term or provision, as similar as possible to the term or provision declared illegal, invalid, or unenforceable.

X. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraph contained herein.

XI. Operations. It is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business in the Project Facilities. The SEDC and Developer/Owner acknowledge and agree that Developer/Owner may, at its sole discretion and at any time cease the operation of its business in the Project Facilities, and SEDC hereby waives any legal action for damages or for equitable relief which might be available because of such cessation of business activity by Developer/Owner except for the recapture of Grant funds as specifically set forth in this Agreement. Provided, however, if Developer/Owner fails to construct the improvements to the Project Facilities as set forth herein, Developer/Owner agrees to reimburse SEDC for all costs expended by SEDC or for which it is legally obligated to expend, as a result of its performance of this Agreement. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or other entity between SEDC and Developer/Owner, with regard to the Project, and SEDC shall have no right hereunder to control the operation of Developer/Owner or the Project. Provided, however, nothing contained herein shall be construed as waiving or limiting the power and authority of SEDC or the City of Seabrook to exercise its police powers, or exempt Developer/Owner from complying with lawfully adopted rules, regulations, ordinances, or laws of the State of Texas or SEDC.

XII. Agreement Product of Negotiation. The Parties agree that this Agreement is the product of negotiation, that each Party has been represented by counsel of their own choosing, that each has freely entered into this Agreement after consulting with their counsel, and that this Agreement contains the terms and conditions requested and required by each. This Agreement shall be construed as having been drafted by all Parties and no term or provision shall be construed either in favor of or against a party on the basis that a party did or did not author this Agreement.

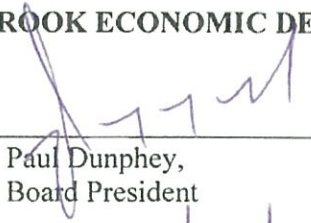
XIII. Limit Of Appropriation. Prior to the execution of this Agreement, Owner/Developer has been advised by the SEDC and Owner/Developer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the SEDC shall have available as a condition for payment, only those sums as expressly provided for under this Agreement for this fiscal year to discharge any and all liabilities which may be incurred by the SEDC. The total compensation that Owner/Developer may become entitled to hereunder and the total sum that the SEDC shall become liable to pay

to Owner/Developer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

The Parties specifically acknowledge that the funds allocated for payment to Owner/Developer by SEDC are derived from sales tax revenues, and that SEDC has only estimated the anticipated tax revenues to be collected during the term of this Agreement in its budget for Fiscal Year 2015-16, and that no estimates have been made of tax revenues for future fiscal years. Owner/Developer further understands, acknowledges, and agrees that if the tax revenues actually collected in any fiscal year are estimated to be or are actually less than the estimated tax revenues anticipated to be collected during the term of this Agreement, SEDC shall be under no obligation to reimburse Owner/Developer for the amount set forth in Section I. Owner/Developer further acknowledges that this Agreement could be anticipated to extend into future fiscal years, and funds may not be available or budgeted in future fiscal years, and that any anticipation of extension may not be enforceable under the Constitution and laws of the State of Texas.

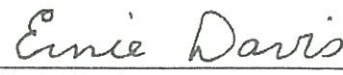
IN WITNESS WHEREOF, and as authorized respectively by the SEDC and City Council of Seabrook and _____, the parties have executed this Agreement effective the day and year first written above.

SEABROOK ECONOMIC DEVELOPMENT CORPORATION


BY: 
Paul Dunphey,
Board President

DATE: 3/21/14, 2016

ATTEST:



Ernie Davis,
Board Secretary

CITY OF SEABROOK, TEXAS



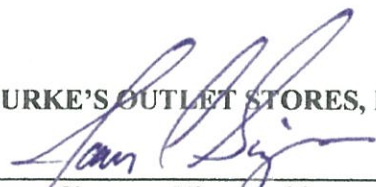
Glenn R. Royal
Mayor

DATE: 3-15, 2016

ATTEST:


Robin Hicks, TRMC
City Secretary



BURKE'S OUTLET STORES, LLC


James Simpson, Vice President

DATE: 3/24/16, 2016